



EXHIBIT 1

DATE 2/22/13

HB

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Montana Legislative Services Division  
Legal Services Office

February 21, 2013

To: Joint Appropriations Subcommittee on Health and Human Services  
From: Julie Johnson  
Re: Use of Interest and Income Funds from the Tobacco Trust

INTRODUCTION

I have been asked to review the laws related to the tobacco trust fund and whether the Legislature can appropriate interest and income from the settlement trust fund for health care services, specifically medicaid services.

QUESTION PRESENTED

Given current law, and the constitutional constraint that "[a]ppropriations of the interest, income, or principal from the [tobacco] trust fund shall not be used to replace state or federal money used to fund tobacco disease prevention programs and state programs that existed on December 31, 1999, providing benefits, services, or coverage of the health care needs of the people of Montana," can tobacco funds be used to pay for medicaid services?

SHORT ANSWER

The medicaid program is a program that existed on December 31, 1999, and provides "benefits, services, or coverage of the health care needs of the people of Montana." Therefore, the Legislature can appropriate interest and income from the settlement trust fund for services as long as the funds do not replace state or federal money. Otherwise stated, the Legislature can appropriate the permitted funds in the account as long as the funds are in addition to the 1999 levels, and comply with current law, which is set forth below.

LAW/ANALYSIS

Article XII, Section 4, of the Montana Constitution establishes the Montana tobacco settlement trust fund, and provides:

(1) The legislature shall dedicate not less than two-fifths of any tobacco settlement proceeds received on or after January 1, 2001, to a trust fund, nine-tenths of the interest and income of which may be appropriated. One-tenth of the interest and income derived from the trust fund on or after January 1, 2001, shall be deposited in the trust fund. The principal of the trust fund and one-tenth of the interest and income deposited in the trust fund shall remain forever inviolate unless appropriated by a vote of two-thirds of the members of each house of the legislature.

(2) Appropriations of the interest, income, or principal from the trust fund shall be used only for tobacco disease prevention programs and state programs providing benefits, services, or coverage that are related to the health care needs of the people of Montana and may not be used for other purposes.

(3) Appropriations of the interest, income, or principal from the trust fund shall not be used to **replace** state or federal money used to fund tobacco disease prevention programs and state programs that existed on December 31, 1999, providing benefits, services, or coverage of the health care needs of the people of Montana.

(Emphasis added). The 2001 Legislature enacted a series of laws related to the tobacco trust fund. Section 17-6-601, MCA, provides that the purpose of the trust fund is "to provide a permanent source of revenue to fund the costs that the state incurs in: (1) programs for tobacco disease prevention; and (2) providing benefits, services, or coverage of health care needs."

Section 17-6-606, MCA, further provides:

The purpose of this section is to dedicate a portion of the tobacco settlement proceeds to fund statewide programs for tobacco disease prevention designed to:

- (a) discourage children from starting use of tobacco;
- (b) assist adults in quitting use of tobacco;
- (c) provide funds for the children's health insurance program; and
- (d) provide funds for the comprehensive health association programs.

Section 17-6-606(2), MCA, provides that 32% of the total yearly tobacco settlement proceeds must be deposited in a state special revenue account and may be used only for funding statewide programs for tobacco disease prevention designed to prevent children from starting tobacco use and to help adults who want to quit tobacco use.

Section 17-6-606(3) provides that 17% of the total yearly tobacco settlement proceeds must be deposited in a state special revenue account and may be used only for:

- (a) matching funds to secure the maximum amount of federal funds for the Children's Health Insurance Program Act provided for in Title 53, chapter 4, part 10; and
- (b) programs of the comprehensive health association provided for in Title 33, chapter 22, part 15, with funding use subject to 33-22-1513.

The Legislature shall appropriate money from the state special revenue accounts provided for in this section for programs for tobacco disease prevention, for the programs referred to in the subsection establishing the account, and for funding the tobacco prevention advisory board. Section 17-6-606(5), MCA. Also, funds deposited in a state special revenue account, as provided in 17-6-606(2) or (3), that are not appropriated within 2 years after the date of deposit must be transferred to the trust fund.

Under sections 17-6-603(1) and (3), MCA, 90% of the interest and income derived from the trust fund must be deposited in an account in the state special revenue fund. The Legislature shall appropriate the funds in this account "for programs for tobacco disease prevention and for state programs that provide benefits, services, or coverage of health care needs." Section 17-6-603, MCA, restricts the use of funds identical to Article XII, Section 4(3):

The money appropriated under this section may not be used to replace state or federal money used to fund programs for tobacco disease prevention or state programs in existence on December 31, 1999, that provide benefits, services, or coverage of health care needs.

#### ANALYSIS

The language of the constitution does not prevent funding from the interest and income of programs that existed in 1999, only that if they did exist in 1999, the funds being appropriated by the Legislature for these programs must be in addition to 1999 levels.<sup>1</sup>

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<sup>1</sup> As a side note, the 2003 Legislature amended 17-6-606 on a short term basis to include the funding of "human services programs" as one of the purposes of the fund in (1). Senate Bill No. 485 (2003) also amended (2) to allow funds in the special revenue account established in (2) be used for "funding human services program." Similarly, (3) was amended to allow funds in the special revenue account established in (3) be used for "matching funds to secure the maximum amount of federal funds for the medicaid program." The Legislature also approved the transfer of nearly \$12 million for the biennium from the state special revenue account in (2) to a "Prevention and Stabilization Account". However, these amendments terminated June 30, 2005.

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**Department of Public Health and Human Services Summary**  
FY 2014      FY 2015

	FTE	General Fund	State Special	Federal	FTE	General Fund	State Special	Federal	Changes to General Fund
<b>Economic Security Branch Total</b>									
Legislative Budget	1,186.21	76,245,127	6,944,101	167,146,358	1,186.21	78,143,303	6,968,390	168,039,503	0
Executive Budget Request	1,199.71	77,226,046	6,944,101	167,048,765	1,199.71	78,841,516	6,968,390	167,930,736	0
Over/(Under) Executive Budget Request	(13.50)	(980,919)	0	97,593	(13.50)	(698,213)	0	108,767	(6,679,353)
<b>Operations Services Branch Total</b>									
Legislative Budget/Action To Date	257.33	18,421,068	2,474,571	34,561,313	257.33	17,891,587	2,460,342	34,321,241	0
Executive Budget Request	259.33	18,439,974	2,509,701	34,796,681	259.33	17,910,493	2,495,472	34,498,493	0
Over/(Under) Executive Budget Request	(2.00)	(18,906)	(35,130)	(235,368)	(2.00)	(18,906)	(35,130)	(177,252)	(37,812)
<b>Medicaid and Health Services Branch Total</b>									
Legislative Budget	1,258.82	342,959,659	125,833,242	864,905,573	1,258.82	360,039,211	129,134,268	908,202,295	0
Executive Budget Request	1,262.82	343,905,872	126,688,808	866,206,962	1,262.82	361,796,351	129,961,147	914,649,761	0
Over/(Under) Executive Budget Request	(4.00)	(946,213)	(855,566)	(1,301,389)	(4.00)	(1,757,140)	(826,879)	(6,447,466)	(2,709,533)
<b>Directors Office</b>									
Legislative Budget	39.25	1,773,197	406,139	1,721,390	39.25	1,772,664	406,093	1,721,021	0
2015 Biennium - Executive Budget Request	39.25	1,773,159	406,138	1,721,429	39.25	1,772,626	406,095	1,721,057	0
Over/(Under) Executive Budget Request	0.00	38	1	(39)	0.00	38	(2)	(36)	0
<b>Public Health and Safety</b>									
Legislative Budget/Action To Date	191.96	3,833,075	16,607,808	44,920,817	191.96	4,018,584	16,607,638	44,737,616	0
Executive Budget Request	191.96	4,015,475	16,607,810	44,875,543	191.96	4,018,585	16,607,638	44,874,749	0
Over/(Under) Executive Budget Request	0.00	(182,400)	(2)	45,274	0.00	(1)	0	(137,133)	(182,400)
<b>Grand Total</b>									
Legislative Budget	2,933.57	443,232,126	152,265,861	1,113,255,451	2,934	461,865,349	155,576,731	1,157,021,676	0.00
Executive Budget Request	2,953.07	445,360,526	153,156,558	1,114,649,380	2,953	464,339,571	156,438,742	1,163,674,796	0.00
Over/(Under) Executive Budget Request	(19.50)	(2,128,400)	(890,697)	(1,393,929)	(20)	(2,474,222)	(862,011)	(6,653,120)	0.00

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FY 2014											
FY 2015											
Changes to General Fund											
Directors Office											
Executive Budget Request											
Adjusted Base											
Statewide Present Law Adjustments											
Action	Yes	DP 50 - Initial Motion to 2012 Base	0.00	617,840	148,895	550,116	0.00	618,372	148,936	550,491	1,236,212
	Yes	DP 51 - Adjustment for Statewide Personal Services		(650,548)	(155,715)	(578,755)		(649,760)	(155,514)	(577,938)	(1,300,308)
	Yes	DP 52 - Adjustment for Statewide Operations		32,746	6,821	28,600		31,426	6,576	27,411	64,172
		DP 53 - Base Funding Switch		(38)	(1)	39		(38)	2	36	(76)
Present Law Adjustments											
Subtotal Legislative Action to Date			39.25	38	1	(39)	39.25	38	(2)	(36)	0
New Proposals											
Subtotal Legislative Action			0.00	0	0	0	0	0	0	0	0
Legislative Budget			39.25	1,773,197	406,139	1,721,390		1,772,664	406,093	1,721,021	
2015 Biennium - Executive Budget Request			39.25	1,773,159	406,138	1,721,429	39.25	1,772,626	406,095	1,721,057	
Legislative Action Over (Under) Executive Request				38	1	(39)		38	(2)	(36)	76
2/21/2013											
Summary Directors Office											
Directors Office											
Legislative Budget			39.25	1,773,197	406,139	1,721,390	0.00	1,772,664	406,093	1,721,021	
2015 Biennium - Executive Budget Request			39.25	1,773,159	406,138	1,721,429	39.25	1,772,626	406,095	1,721,057	
Over / Under Executive Budget Request			0.00	38	1	(39)	(39.25)	38	(2)	(36)	76

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**Public Health & Safety Division**

FY 2014

FY 2015

Action	FY 2014				FY 2015				Changes to General Fund
	FTE	General Fund	State Special	Federal	FTE	General Fund	State Special	Federal	
<b>Executive Budget Request</b>	<b>191.96</b>	<b>4,015,475</b>	<b>16,607,810</b>	<b>44,875,543</b>	<b>191.96</b>	<b>4,018,585</b>	<b>16,607,638</b>	<b>44,874,749</b>	
<b>Adjusted Base</b>	<b>191.96</b>	<b>3,833,075</b>	<b>15,292,810</b>	<b>41,597,308</b>	<b>191.96</b>	<b>3,836,185</b>	<b>15,292,638</b>	<b>41,396,514</b>	
<b>Statewide Present Law Adjustments</b>									
DP 50 - Initial Motion to 2012 Base		(220,552)	(458,914)	(610,175)	0.00	(237,539)	(527,636)	(526,610)	(458,091)
DP 51 - Adjustment for Statewide Personal Services		200,055	411,276	558,233		201,978	416,248	567,097	402,033
DP 52 - Adjustment for Statewide Operations		16,472	46,845	56,763		15,074	39,635	51,747	31,516
DP 53 - Base Funding Switch		4,025	791	(4,817)		20,486	71,753	(92,237)	54,511
<b>Present Law Adjustments</b>									
DP 70104 State Laboratory Operations		0	150,000	0		0	150,000	0	0
DP 70112 Poison Control Hotline (RST/OTO)		0	0	0		182,400	0	(182,400)	182,400
DP 70113 Tobacco Use Prevention		0	750,000	0		0	750,000	0	0
<b>Subtotal Legislative Action to Date</b>	<b>0.00</b>	<b>0</b>	<b>899,998</b>	<b>4</b>	<b>0.00</b>	<b>182,399</b>	<b>900,000</b>	<b>(182,403)</b>	<b>182,399</b>
<b>New Proposals</b>									
DP 70100 Community Transformation Grant		0	0	769,195		0	0	769,195	0
DP 70103 Improve Serv for Children - Special Hlt Needs		0	0	294,912		0	0	294,912	0
DP 70105 EPI and Laboratory Capacity Grant		0	0	533,531		0	0	533,531	0
DP 70106 Medicaid Incentive Grant		0	0	111,791		0	0	111,791	0
DP 70108 MIEC Home Visiting Program		0	0	1,000,000		0	0	1,000,000	0
DP 70109 Public Health System Improvement Grant		0	0	150,000		0	0	150,000	0
DP 70110 State Loan Repayment Program		0	0	35,617		0	0	35,617	0
DP 70118 Asthma Home Visiting		0	90,000	0		0	90,000	0	0
DP 70119 Heart Disease & Diabetes Prevention		0	125,000	0		0	125,000	0	0
DP 70120 Genetics Program		0	200,000	0		0	200,000	0	0
DP 70121 State-Based Arthritis Program		0	0	428,459		0	0	428,459	0
DP 70122 Regional Emergency Pediatric Services Grant		0	0	200,000		0	0	200,000	0
DP 70124 Syndromic Surveillance Program		0	0	137,130		0	0	137,130	0
<b>Subtotal Legislative Action to Date</b>	<b>0.00</b>	<b>0</b>	<b>415,000</b>	<b>3,523,505</b>	<b>0.00</b>	<b>0</b>	<b>415,000</b>	<b>3,523,505</b>	<b>0</b>
<b>Legislative Budget/Action To Date</b>	<b>191.96</b>	<b>3,833,075</b>	<b>16,607,808</b>	<b>44,920,817</b>	<b>191.96</b>	<b>4,018,584</b>	<b>16,607,638</b>	<b>44,737,616</b>	
<b>2015 Biennium - Executive Budget Request</b>	<b>191.96</b>	<b>4,015,475</b>	<b>16,607,810</b>	<b>44,875,543</b>	<b>191.96</b>	<b>4,018,585</b>	<b>16,607,638</b>	<b>44,874,749</b>	
<b>Legislative Action Over (Under) Exec. Bud.</b>		<b>(182,400)</b>	<b>(2)</b>	<b>45,274</b>		<b>(1)</b>	<b>0</b>	<b>(137,133)</b>	<b>(182,401)</b>

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**Summary Public Health and Safety Division**

<b>Public Health and Safety</b>									
<b>Legislative Budget/Action To Date</b>	<b>191.96</b>	<b>3,833,075</b>	<b>16,607,808</b>	<b>44,920,817</b>	<b>191.96</b>	<b>4,018,584</b>	<b>16,607,638</b>	<b>44,737,616</b>	
<b>Executive Budget Request</b>	<b>191.96</b>	<b>4,015,475</b>	<b>16,607,810</b>	<b>44,875,543</b>	<b>191.96</b>	<b>4,018,585</b>	<b>16,607,638</b>	<b>44,874,749</b>	
<b>Over / Under Executive Budget Request</b>	<b>0.00</b>	<b>(182,400)</b>	<b>(2)</b>	<b>45,274</b>	<b>0.00</b>	<b>(1)</b>	<b>0</b>	<b>(137,133)</b>	<b>(182,401)</b>